

CORRECTING CFR REFERENCE

INFORMATIONAL LETTER #96-7

DATE: ~~May 3, 1996~~ **June 27, 1996**

TO: All Skilled Nursing Facilities

FROM: John W. Hathaway, Chief
Bureau of Facility Standards

SUBJECT: CRIMINAL HISTORY CHECKS

During a recent meeting with federal representatives from the Health Care Financing Administration in Seattle, Idaho Facility Standards personnel were again reminded that Idaho is not currently in compliance with a federal regulation that essentially requires all long term care facilities to conduct a criminal history background check on all personnel before they are hired.

42 CFR 483.13(c)(1)(ii) of the federal long term care Medicare/Medicaid requirements (F225) states:

"The facility must-

"ii) Not employ individuals who have been--

"A) Found guilty of abusing, neglecting, or mistreating residents by a court of law;"

The regulation does not address the exact method a facility must use to ensure that employees do not have a history of abuse conviction. Some of the methods that a facility might choose include:

1. Self-attestation with documented reference checks. The facility can require the employee to sign a statement indicating that he/she has never been convicted or has no employment history of resident abuse, neglect, mistreatment, or misappropriation of resident property. The employee must list references or referrals which can substantiate the statement. There must be documentation in the personnel file that the facility contacted the listed references and/or referrals and received confirmation.
2. Local law enforcement background check. Contact your local police department for details.
3. Background check through the Bureau of Criminal Identification.

A facility may choose other means of checking an employee's background for convictions. Whatever means the facility chooses, the facility remains responsible for employee actions.

Should the facility choose to utilize the Bureau of Criminal Identification to get background checks, we are enclosing an instructional letter prepared by that Bureau. Only the "Name Check" is required. The fingerprint check is not required.

As of **July 1, 1996**, all employees, current and prospective, need to have some kind of background check. At that time, Facility Standards will incorporate review of the background check as a routine part of resident abuse investigations involving facility staff.

The cost of the criminal background check is reimbursable by Medicaid.

The facility continues to be required to check the Nurse Aide Registry with the Board of Nursing for a validated finding of abuse, neglect, mistreatment of residents, or misappropriation of their property. Any individual with such a finding may not be employed by a Medicare/Medicaid certified facility.

F225 42 CFR 483.13(c)(1)(iii) further states:

"(1) The facility must-

"(iii) Report any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a nurse aide or other facility staff to the State nurse aide registry or licensing authorities."

The Guidance to Surveyors for this requirement further states:

"An aide or other facility staff found guilty of neglect, abuse, or mistreating residents, or misappropriation of property by a court of law, must have his or her name entered into the nurse aide registry, or reported to the licensing authority, if applicable. Further, if a facility determines that actions by a court of law against an employee are such that they indicate that the individual is unsuited to work in a nursing home (e.g., felony conviction of child abuse, sexual assault, or assault with a deadly weapon), then the facility must report that individual to the nurse aide registry (if a nurse aide) or to the State licensing authorities (if a licensed staff member). Such a determination by the facility is not limited to mistreatment, neglect and abuse of residents, and misappropriation of their property, but to any treatment of residents or others inside or outside the facility which the facility determines to be such that the individual should not work in a nursing home environment."

~~May 3, 1996~~

Page 3

CORRECTING CFR REFERENCE

June 27, 1996

Therefore, when the facility receives the results of the criminal history checks, the following convictions must be **reported**:

1. Any aide with a conviction of resident abuse, neglect, mistreatment, or misappropriation of property must be reported to Facility Standards. We will ensure that a validated finding of abuse is placed on the nurse aide registry with the Board of Nursing. The individual may not work in a certified facility.
2. A licensed nurse with a conviction involving any action against a person, which may indicate an unfitness for work with vulnerable residents, must be reported to the Board of Nursing.
3. Any nonlicensed employee with a conviction involving any action against a person, which may indicate an unfitness for work with vulnerable residents, must be reported to Facility Standards.

Discussions are underway with the Board of Nursing regarding the possibility of the Board conducting criminal history checks on CNAs and licensed nurses at some time in the future. This, however, would require legislation and will not happen any time soon.

As always, if you have questions or comments, please feel free to contact this office at (208) 334-6626.

JOHN W. HATHAWAY, Chief
Bureau of Facility Standards

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Enclosure

cc: Idaho Health Care Association
Idaho Board of Nursing